IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 296 OF 2006

Deepak Eknath Pavshe. ...Applicant
V/s.
State of Maharashtra. ...Respondent

Shri N.N. Gavankar with Shri Arfan Sait for Applicant.
Shri S.S. Tatkare, APP for the State.

CORAM : V.M. KANADE, J.

DATED : FEBRUARY 17, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. The applicant was arrested on 2nd June, 2005 in connection with an offence which had taken place on 13th April, 2005 when few people opened fire on one Jaywant Mhatre who succumbed to the injuries and died. It is alleged that Janardhan Mhatre who was a cousin of the deceased had given a contract to the applicant and others for the purpose of eliminating the deceased who was his business rival in the construction business. So far the present applicant is concerned, the witness has stated that he was seen at the scene of the offence,

however, no overtact has been attributed to this witness. Two other eye witnesses viz. Anil Shinde and Vivek Khamkar have stated about the applicant's presence in their statements, as according to Vivek Khamkar, applicant had tried to engage his services for eliminating Jaywant Mhatre sometime in the year 2003. Anil Shinde also has stated that he had seen the applicant at the scene of the offence. The statement of Vivek Khamkar was recorded in June 2005 almost one month after the arrest of the applicant. The statement of Anil Shinde has been recorded on 30th April, 2005. The other three accused Gopal, Suryakant and Gaurav Sharma have been released on bail.

2. Learned Counsel for the applicant seeks bail on the ground of parity. He submits that the only evidence against the applicant is in the form of statement of Vikek Khamkar which was recorded almost after one month after his arrest and therefore, the said statement obviously subsequently obtained to implicate the present applicant.

3. I have heard learned Counsel for the applicant and learned APP for the State at length. The only evidence against the applicant is that he was standing near the scene of the offence. The other three accused Gopal, Surayakant and Gautam have been released on bail and same role is attributed by the other witnesses and it is difficult to rely upon the statement of Vivek Khamkar particularly because he talks about the incident which had taken place almost two years before the incident. Secondly, the statement has been recorded after the almost after two months from the date of the incident. The applicant, therefore, is entitled to be released on bail.

4. The applicant be released on bail in the sum of Rs.5000/- with one or two sureties in the like amount. The applicant shall report to Vishnunagar Police Station once in a week.

5. It is clarified that any observations made by this Court while deciding this application for bail should not be construed to mean any expression on the

merits of the case. The trial Court shall not be influenced by any of these observations and shall decide the case on its own merits.

. The application is disposed of in the above terms.

(V.M. KANADE, J.)